

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE**

**B.P., H.A., and S.H., individually, and
on behalf of all others similarly situated,**

Plaintiffs,

vs.

**CITY OF JOHNSON CITY, TENNESSEE,
a governmental entity,**

**KARL TURNER, individually and in his
official capacity as Chief of the Johnson
City Police Department,**

**KEVIN PETERS, individually and in his
official capacity as Captain of the
Johnson City Police Department,**

**TOMA SPARKS, individually and in his
official capacity as Investigator of the
Johnson City Police Department,**

**JUSTIN JENKINS, individually and in his
official capacity as Investigator of the
Johnson City Police Department,**

**JEFF LEGAULT, individually and in his
official capacity as Investigator of the
Johnson City Police Department,**

**BRADY HIGGINS, individually and in his
official capacity as Investigator of the
Johnson City Police Department, and**

DOES 8-20, inclusive,

Defendants.

No. 2:23-cv-71

Judge McDonough

Magistrate Judge Wyrick

JURY TRIAL DEMAND

**PARTIAL MOTION TO DISMISS THE SECOND AMENDED COMPLAINT
FILED BY DEFENDANT TOMA SPARKS**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Investigator Toma Sparks (“Inv. Sparks”), as a Defendant in this case, hereby moves this Court to dismiss Claim VI Equal Protection, 42 U.S.C. § 1983 Violation of Substantive Rights to Due Process. (D.E. 121 ¶¶ 382 - 88)

1. Plaintiffs fail to allege that they were deprived of a substantive due process right. Investigator Sparks took no affirmative actions that shock the conscience towards any of the Plaintiffs that would deprive any plaintiff of a constitutionally protected interest. The Plaintiffs do not have a constitutional interest in the investigation or prosecution of a third person. *See, Mitchell v. McNeil*, 487 F.3d 374, 378 (6th Cir. 2007); *White v. Greene County Sheriff's Dep't*, 2014 U.S. Dist. LEXIS 91484, *24 (E.D. Tenn. July 7, 2014).

2. The Plaintiffs do not have a right to be protected from the violent actions of a private third party. *See, DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989). The factual actions alleged by the Plaintiffs do not meet the demanding burden of stating a claim for a state created danger where Inv. Sparks may have had a duty to protect them from a third party. *See generally, Jones v. Reynolds*, 438 F.3d 685 (6th Cir. 2006).

3. Alternatively, to the extent that Plaintiffs adequately allege a violation of their constitutional rights, the alleged violation was not based on clearly established law, and as such Inv. Sparks has qualified immunity. *Draw v. City of Lincoln Park*, 491 F.3d 550, 556 (6th Cir. 2007)

In support of such motion, Inv. Sparks relies upon the contemporaneously filed memorandum of law. In accordance with the Order of the Court entered on June 22, 2023, (D.E. 5), Inv. Sparks is contemporaneously filing a notice to certify that the parties have conferred and agree that there are no amendments to the Second Amended Class Action Complaint that will cure the issues raised in the instant Motion.

Based upon the foregoing, Inv. Sparks respectfully asks that this Court dismiss with prejudice the substantive due process claim raised against him in Count VI of the Second Amended Class Action Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 15th day of May 2024, a true and correct copy of the foregoing has been forwarded via the Court's electronic notification system to:

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